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15085

RECORDATION NO.

Filed & Recorded

SANFORD A. WITKOWSKI  
COUNSEL

OCT 27 1985 4-30 PM

OTTO J. HETZEL  
JOSEPH D. FEENEY\*  
OF COUNSEL

INTERSTATE COMMERCE COMMISSION

October 27, 1986

6 300A097

No.

OCT 27 1986

Date .....

Fee \$ ..10.00

TCC Washington, D. C.

100 STAFF OF  
THE SECRETARY  
OCT 27 4 24 PM '86  
MOTOR OPERATING UNIT

Ms. Noreta S. McGee  
Secretary  
Interstate Commerce Commission  
12th Street & Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Ms. McGee:

Enclosed please find an original and one certified copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the United States Code.

This document is a security agreement, a primary document, dated October 25, 1986.

The names and addresses of the parties to the document are as follows:

Secured Party: Mr. Robert Aberlin, Agent  
352 Clinton Street  
Brooklyn, NY 11231

Debtor: Otter Tail Valley Railroad Company, Inc.  
North Mill Street  
Fergus Falls, Minnesota 56537

Interstate Commerce Commission  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

10/28/86

Deborah A Phillips  
Weiner, McCaffrey, Brodsky & Kaplan  
Suite 800 1350 New York Ave. N.W.  
Washington, D.C. 20005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/27/86 at 4:30pm, and assigned re-recording number(s). 15085

Sincerely yours,

*Noreta R. McGee*  
Secretary

Enclosure(s)

SE-30  
(7/79)

Ms. Noreta S. McGee

-2-

October 27, 1986

The railroad rolling stock covered by the aforesaid security agreement is as follows:

<u>Type</u>	<u>Serial Number</u>
Caboose	BN # 10353
Flatcar	BN # 959451
Ballast Car	GN # 78291
Snowplow	C&S # 99234

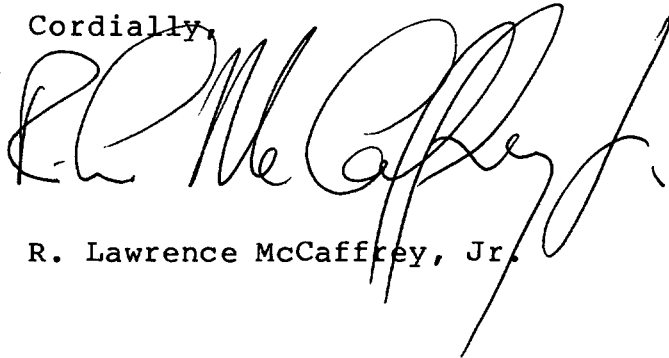
and all other rolling stock hereafter acquired by Otter Tail Valley Railroad Company, Inc.

A check in the amount of \$10 made payable to the Interstate Commerce Commission for the fee is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to Deborah A. Phillips, Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Ave., N.W., Washington, D.C. 20005.

A short summary of the document to appear in the index follows:

Security Agreement between Mr. Robert Aberlin, Agent, secured party, 352 Clinton Street, Brooklyn, New York 11231 and Otter Tail Valley Railroad Company, Inc., Debtor, North Mill Street, Fergus Falls, Minnesota 56537, dated October 23, 1986, and covering a caboose (serial number BN # 10353), a flatcar (serial number BN # 959451), a ballast car (serial number GN # 78291) and a snowplow (serial number C&S # 99234).

Cordially,



R. Lawrence McCaffrey, Jr.

Enclosures

RLM/gw/4510D/6790-1

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## SECURITY AGREEMENT

INTERSTATE COMMERCE COMMISSION

SECURITY AGREEMENT dated as of October 25, 1986, by and among Otter Tail Valley Railroad Company, Inc., a Minnesota corporation ("the Company"), and Robert E. Aberlin, as agent ("the Agent") for lenders which are or may become parties to a certain Term Loan Agreement, dated as of October 25, 1986, among the Company, the Agent and such lenders (such lenders are individually referred to herein as a "Secured Party" and collectively referred to herein as the "Secured Parties").

Section 1. Grant of Security Interest, Etc.

The Company hereby pledges and assigns to the Agent for the benefit of the Secured Parties and grants to the Agent for the benefit of the Secured Parties, a continuing security interest in and lien on, all properties, assets and rights of the Company of every kind and nature, wherever located, now owned or hereafter acquired or arising, and all proceeds and products thereof, including without limiting the generality of the foregoing, all goods, accounts, including all accounts receivable, contract rights, including without limitation all rights of the Company under the Purchase and Sale Agreement, and the Transportation Agreement, Assignment of Joint Facility Agreements, Interchange Agreement, Car Repair Agreement, Rate and Allowance Agreement, and Administrative Agreement, each dated as of August 4, 1986, by and between Burlington Northern Railroad Company and MINA Corporation (and assigned to the Company) or the Company and all rights of the Company under any agreements with other operating railroads pursuant to which rights of passage over tracks are granted during periods of emergency and disasters, rights to the payment of money including tax refund claims, insurance proceeds and tort claims, chattel paper, documents, instruments, general intangibles, the Company's operating certificate from the Interstate Commerce Commission, securities, patents, trademarks, tradenames, copyrights, engineering drawings, service marks, books and records, furniture, fixtures, rolling stock, including, but not limited to, locomotives, cabooses, rail, ties and capital improvements thereon, equipment, maintenance of way equipment, inventory and all other capital assets, raw materials, work in progress, and real property, other than real or personal property (other than the flat car, ballast car, snow plow and caboose) that is being acquired pursuant to the Purchase Agreement or is subject to a security interest in favor of the First National Bank of Fergus Falls and interests in and rights in, on or over real property,

including railbeds, yards and maintenance areas (all such properties, assets and rights hereinafter sometimes called, collectively, "the Collateral").

Section 2.      Obligations Secured.

The Collateral hereunder constitutes and will constitute continuing security for all the obligations of the Company to the Secured Parties and any lender who becomes a participant in or holder of any of the obligations comprising the Obligations (as defined below), now existing or hereafter arising, direct or indirect, absolute or contingent, due or to become due, matured or unmatured, liquidated or unliquidated, arising by contract, operation by law or otherwise, including without limitation, all obligations to either the Agent or Secured Parties, or both, now existing or hereafter arising under this Agreement, under the Term Loan Agreement dated as of October 25, 1986, among the Company, the Agent, and the Secured Parties ("the Loan Agreement"), or under the promissory notes executed and delivered by the Company to the Secured Parties in the aggregate principal amount of \$240,000, in each case as such instrument is originally executed on the date hereof or as modified, amended, supplemented or extended, and all obligations of the Company to the Secured Parties arising out of any extension, refinancing or refunding of any of the foregoing obligations, whether for the payment of principal, interest, fees, expenses or otherwise (hereinafter collectively referred to as "the Obligations").

Section 3.      Pro Rata Security, Application of Proceeds  
                 of Collateral.

All amounts owing with respect to the Obligations shall be secured pro rata by the Collateral without distinction as to whether some Obligations are then due and payable and other Obligations are not then due and payable. Upon any realization upon the Collateral by the Agent or any Secured Party, whether by receipt of insurance proceeds pursuant to Section 5(f) or upon foreclosure and sale of all or part of the Collateral pursuant to Section 8 or otherwise, the Company and the Secured Parties agree that the proceeds thereof shall be applied:

(i) to the payment of expenses incurred with respect to maintenance and protection of the Collateral pursuant to Section 5 and of expenses incurred pursuant to Section 13 with respect to the sale of or realization upon any

of the Collateral or the perfection, enforcement or protection of the rights of the Secured Parties (including reasonable attorney's fees and expenses of every kind);

(ii) equally and ratably to all amounts of interest, expenses and fees outstanding which constitute the Obligations, according to the aggregate amounts thereof owing to each Secured Party, on the date on which the Agent receives a request from the Majority Lenders (as defined in the Loan Agreement) to commence action under Section 8 hereof to enforce the security interests granted hereunder ("the Notice Date");

(iii) equally and ratably to all amounts of unpaid principal outstanding which constitute the Obligations according to the aggregate amounts thereof owing to each Secured Party on the Notice Date; and

(iv) any excess, after payment in full of all of the Obligations, shall be returned to the Company. Proceeds applied to the payment of the Obligations shall be applied first to interest, expenses and fees due which constitute the Obligations and then to all amounts of unpaid principal outstanding which constitute the Obligations. The Company and the Secured Parties agree that all amounts received with respect to any of the Obligations subsequent to the Notice Date, whether by realization on the Collateral or otherwise, shall be applied to the payment of the Obligations in accordance with the provision of this Section 3.

#### Section 4. Pro Rata Sharing of Payments in Certain Events.

The Company and the Secured Parties agree that upon the occurrence and continuance of an Event of Default (as defined in the Loan Agreement) by the Company in payment of any of the Obligations, whether or not the Obligations shall have been accelerated as a consequence thereof, the Secured Party which has failed to receive the payment due ("the Defaulted Party") may, by notice in writing to the other Secured Parties ("a Sharing Notice"), declare that a "Sharing Event" has occurred. The Company and the Secured Parties agree that any payments received by any Secured Party from either the Company or from any other source whatsoever, on or after the date any Sharing Notice is received, shall be shared by the Secured Parties on a pro rata basis based on the total amount of Obligations outstanding on the date such Sharing Notice is given; provided, however, that if such payment default is cured prior to acceleration of the Company's Obligations to the Defaulted Party, the provisions of this Section 4 shall cease

to be effective and any payments received by such Secured Party thereafter may be applied to the Obligations in accordance with the terms thereof. Each Secured Party agrees with the other Secured Parties that if during the continuance of any Sharing Event, such Secured Party shall receive from the Company or from any other source whatsoever, any amount which is in excess of its pro rata share of the payments received by all of the Secured Parties, then such Secured Party will make such disposition and arrangements with the other Secured Parties with respect to such excess, either by way of distribution until the amount of such excess has been exhausted, assignment of claims, subrogation, purchase of participation or otherwise, as shall result in each Secured Party receiving in respect of the Obligations owed to it its ratable share of all such payments; provided, however, that if all or any part of such excess payment is thereafter recovered from such Secured Party, such disposition and arrangements shall be rescinded and the amount restored to the extent of such recovery, but without interest.

Section 5. Representations and Covenants of the Company.

(a) Real Property. The Company represents to the Secured Parties that the only real property which the Company has the right to acquire is that property subject to the Purchase and Sale Agreement. The Company agrees to notify the Agent of any other real property which the Company may hereafter acquire or lease. The Company agrees that it will execute and deliver to the Agent for the benefit of the Secured Parties mortgages and other instruments, as referred to in paragraph (h) below of this Section 5, and file the same in the appropriate recording offices with respect to the real property it may acquire at such times as any mortgageable right, title or interest is acquired in the future by the Company in any real property. All such mortgages and other instruments shall secure all of the Obligations pro rata and shall be on terms and conditions satisfactory to the Agent as evidenced by his written consent thereto.

(b) Rolling Stock. The Company represents to the Secured Parties that the Rolling Stock (as defined in this Section 5(b)) listed on Schedule I hereto constitutes all of the Rolling Stock which the Company owns or leases except Rolling Stock subject to the lien of the First National Bank of Fergus Falls. The Company agrees not to change any markings or serial numbers on any of the Rolling Stock listed on Schedule I until after the Company has given notice in writing to the Agent of its intention to make such change. The Company agrees

to notify the Agent of any other Rolling Stock which the Company may hereafter acquire or lease. The Company agrees that it will execute and deliver to the Agent for the benefit of the Secured Parties supplemental security agreements and other instruments, as referred to in paragraph (h) below of this Section 5, and file the same in the appropriate recording offices:

(i) with respect to the Rolling Stock listed on Schedule I hereto;

(ii) at such times as any assignable right, title or interest is acquired in the future by the Company in any other Rolling Stock; and

(iii) at such times as any change is made in one or more of the markings or serial numbers on any of the Rolling Stock listed on Schedule I hereto or on any other Rolling Stock owned or leased by the Company. All such supplemental security agreements and other instruments shall secure all of the Obligations pro rata and shall be on terms and conditions satisfactory to the Agent as evidenced by its written consent thereto. The term "Rolling Stock" as used herein means all rolling stock, including but not limited to, locomotives, cabooses, flat cars, boxcars, open top hopper cars, covered hopper cars, gondolas and all other rail cars.

(c) Location of Chief Executive Office, etc. The Company represents to the Secured Parties that the location of the Company's chief executive office and the location where the books and records of the Company are kept is North Mill Street, Fergus Falls, Minnesota, and that the Company's registered office is c/o CT Corporation System, Inc., 405 Second Avenue, South, Minneapolis, Minnesota. The Company further presents that attached hereto as Schedule II is a true and correct list of all localities where property comprising a part of the Collateral is located. The Company agrees that it will not change the location of its chief executive office or the location where its books and records are kept or the location of its registered office without the express written consent of the Agent and will advise the Agent as to any change in the location of any property comprising a part of the Collateral.

(d) Ownership of Collateral.

(i) The Company represents that it is the owner of the Collateral, that it has no actual knowledge without inquiry of any adverse lien, security interest or encumbrance and that it has not granted any lien, security interest or



encumbrance, except as permitted by Section 7.2 of the Loan Agreement.

(ii) Except as otherwise permitted in Section 7.2 of the Loan Agreement, the Company shall not pledge, mortgage or create or suffer to exist a security interest in the Collateral in favor of any person other than the Secured Parties.

(e) Sale or Disposition of Collateral. Except as permitted by Section 7.3 of the Loan Agreement as originally executed, the Company will not sell or offer to sell or otherwise transfer the Collateral or any interest therein except for sales or inventory in the ordinary course of business.

(f) Insurance. The Company shall have and maintain at all times with respect to the Collateral such insurance as is required by the Loan Agreement, such insurance to be payable to the Agent for the benefit of the Secured Parties and to the Company as their interests may appear. All policies of insurance shall provide for ten (10) days' written minimum cancellation notice to the Agent. In the event of failure to provide and maintain insurance as herein provided, the Agent may, at its option, provide such insurance, and the Company hereby promises to pay to the Agent on demand the amount of any disbursements made by the Agent for such purpose. The Company shall furnish to the Agent certificates or other evidence satisfactory to the Agent of compliance with the foregoing insurance provisions. The Agent is hereby irrevocably appointed and may act as attorney-in-fact for the Company in obtaining, adjusting, settling and cancelling such insurance and endorsing any drafts; and any amounts collected or received under any such policies shall be applied by the Agent to the Obligations in accordance with the provisions of Section 3, or, at the option of the Agent, the same may be released to the Company, but such application or release shall not cure or waive any default hereunder and no amount so released shall be deemed a payment on any Obligation secured hereby.

(g) Maintenance of Collateral. The Company will keep the Collateral in good order and repair for its intended use and will not use the same in violation of law or any policy of insurance thereon. The Agent may inspect the Collateral at any reasonable time, wherever located. Except as otherwise provided in Section 6.2 of the Loan Agreement, the Company will pay promptly when due all taxes and assessments upon the Collateral or for its use or operation or upon this Agreement. In its discretion, the Agent may discharge taxes and other

encumbrances at any time levied or placed on the Collateral which remain unpaid in violation of Section 7.2 of the Loan Agreement as originally executed, make repairs thereof and pay any necessary filing fees. The Company agrees to reimburse the Agent on demand for any and all expenditures so made, and until paid the amount thereof shall be a debt secured by the Collateral. The Agent shall have no obligation to the Company to make any such expenditures, nor shall the making thereof relieve the Company of any default.

(h) Accounts Receivable. The Agent shall have the right at any time, upon the occurrence and during the continuance of an Event of Default and upon written notice to the Company of its intention to do so, to notify the account debtors or obligors under any accounts, contract rights, chattel paper, instruments, general intangibles and obligations constituting Collateral ("Receivables") of the pledge and assignment of such Receivables to the Agent and to direct such account debtors or obligors to make payment of all amounts due or to become due to the Company thereunder directly to the Agent and, upon such notification and at the expense of the Company, to enforce collection of any such Receivable, and to adjust, settle or compromise the amount or payment thereof in the same manner and to the same extent as the Company might have done. After receipt by the Company of the notice from the Agent referred to in the preceding sentence, (i) all amounts and proceeds (including instruments) received by the Company in respect of the Receivables shall be received in trust for the benefit of the Agent hereunder, shall be segregated from other funds of the Company, and shall be forthwith paid over to the Agent.

(i) Corporate Authority. The execution, delivery and performance by the Company of this Agreement are within the Company's corporate powers, have been duly authorized by all necessary corporate action, do not contravene (i) the Company's charter or by-laws or (ii) law, rule or regulation or any contractual restriction binding on or affecting the Company, and do not result in or require the creation of any lien, security interest or other charge or encumbrance (other than pursuant hereto) upon or with respect to any of its properties.

(j) No Further Approval. No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the Company of any Loan Document, as defined in the Term Loan Agreement, except for the filings referred to in subsection (m) below and as otherwise stated in such subsection.

(k) Enforceability. This Agreement is, and each other Loan Document to which the Company will be a party when delivered, will be, legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms.

(l) No Other Financing Statement. No effective financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in any recording office, except such as may have been filed in favor of the Agent relating to this Agreement. The Company has no trade name.

(m) Valid Security Interest. This Agreement creates a valid security interest in the Collateral, securing the payment of the Obligations, and all financing statements with respect to such security interest are in appropriate form and have been duly executed and all other actions necessary or desirable to protect such security interest have been duly taken, except for the filing of such financing statements.

(n) Further Assurance by the Company. The Company agrees to execute and deliver to the Agent for the benefit of the Secured Parties from time to time at its request all documents and instruments, including financing statements, supplemental security agreements, notices of assignments under the United States Assignment of Claims Acts and under similar or local statutes and regulations, and to take all action as the Agent may reasonably deem necessary or proper to perfect or otherwise protect and continue the security interest and lien created hereby. At the request of the Agent, the Company will: (i) mark conspicuously each document and each chattel paper included in the Receivables and, at the request of the Agent, each of its records pertaining to the Collateral, with a legend, in form and substance satisfactory to the Agent, indicating that such document and chattel paper, is subject to the security interest granted hereby; (ii) if any Receivable shall be evidenced by a promissory note or other instrument, deliver and pledge to the Agent hereunder such note or instrument duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to the Agent; and (iii) execute and file such financing statements or continuation statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as the Agent may request, in order to perfect and preserve the security interests granted hereby.

Section 6. Power of Attorney.

The Company acknowledges the Agent's right, to the extent permitted by applicable law, singly to execute and file financing statements, and continuation statements with respect thereto, without execution by the Company.

Section 7. Securities as Collateral.

The Agent may at any time, at its option, transfer to itself or any nominee any securities constituting Collateral, receive any income thereon and hold such income as additional Collateral or apply it to the Obligations. Regardless of the adequacy of the Collateral or any other security for the Obligations, any deposits or other sums credited by or due from the Agent to the Company may at any time be applied to or set off against any of the Obligations. The Agent and all present and future holders of and participants in the Obligations hereby agree that the amount of any such set off shall be applied as provided in Sections 3 and 4 hereof.

Section 8. Remedies.

Upon the occurrence of any Default or Event of Default as defined in the Loan Agreement (whether or not any acceleration of the maturity of the amounts due in respect of any of the Obligations shall have occurred), to the fullest extent permitted by applicable law:

(a) The Agent shall have, in addition to all other rights and remedies given it by any instrument or other agreement evidencing, or executed and delivered in connection with, any of the Obligations and otherwise allowed by law, the rights of a secured party under the Uniform Commercial Code and the rights and remedies of a secured party holding a security interest in collateral pursuant to the Interstate Commerce Act of 1887, as amended, and, without limiting the generality of the foregoing, the Agent shall, upon the written instruction of the Majority Lenders, immediately, without (to the fullest extent permitted by law) demand of performance or advertisement or notice of intention to sell or of time or place of sale or of redemption or other notice or demand whatsoever (except that the Agent shall give to the Secured Parties and the Company at least ten (10) Business Days (as defined in the Loan Agreement) notice of the time and place of any proposed sale or other disposition), all of which are hereby expressly waived to the fullest extent permitted by law, sell at public or private sale

or otherwise realize upon the whole or from time to time any part of the Collateral in or upon which the Agent shall have a security interest or lien hereunder, or any interest which the Company may have therein, and after deducting from the proceeds of sale or other disposition of the Collateral all expenses (including all reasonable expenses for legal services), as provided in Section 13, shall apply the residue of such proceeds toward the payment of the Obligations in accordance with Section 3 of this Security Agreement, the Company remaining liable for any deficiency remaining unpaid after such application. If notice of any sale or other disposition is required by law to be given to the Company or any Secured Party, each of the Company and the Secured Parties hereby agrees that a notice given as hereinbefore provided shall be reasonable notice of such sale or other disposition. The Company also agrees to assemble the Collateral at such place or places as the Agent reasonably designates by written notice. At any such sale or other disposition, any Secured Party may itself, and any other person or entity owed any Obligation may itself, purchase the whole or any part of the Collateral sold, free from any right of redemption on the part of the Company, which right is hereby waived and released to the fullest extent permitted by law. The Secured parties agree with each other that so long as any Obligation remains outstanding, none of the Secured Parties nor any other holder of any of the Obligations shall have the right to bid for the Collateral being sold at any sale pursuant to this Section 8(a) with any part of the Obligations as applicable, and the Agent and Company shall have no obligation to accept any such bid.

(b) Without limiting the generality of any of the rights and remedies conferred upon the Agent, under Section 8(a) hereof, the Agent to the fullest extent permitted by law, shall upon the written instruction of the Majority Lenders enter upon the premises of the Company, exclude the Company therefrom and take immediate possession of the Collateral, either personally or by means of a receiver appointed by a court therefor, using all necessary force to do so, and may, at its option, use, operate, manage and control the Collateral in any lawful manner and may collect and receive all rents, income, revenue, earnings, issues and profits therefrom, and may maintain, repair, renovate, alter or remove the Collateral as the Agent may determine in its discretion, and any such monies so collected or received by the Agent shall be applied to, or may be accumulated for application upon, the Obligations in accordance with Section 3 of this Agreement.

The Agent agrees that it will give notice to the Company and the Secured Parties of any enforcement action taken by it pursuant to this Section 8 promptly after commencing such action.

Section 9. Secured Parties; Other Collateral.

All of the provisions of this Agreement, to the extent that they relate to the relative rights, duties and privileges of the Secured Parties and the Agent, including without limitation the provisions of Sections 3 and 8 hereof, shall apply to any and all properties, assets and rights of the Company in which the Agent, at any time, acquires, pursuant to the Security Documents, as defined in the Loan Agreement ("the Security Documents"), a security interest or lien, including without limitation, real property or rights in, on or over real property, notwithstanding any provision to the contrary in any mortgage, leasehold mortgage or other document, purporting to grant or perfect any lien in favor of the Secured Parties or any of them or the Agent for the benefit of the Secured Parties.

Section 10. Marshalling.

The Agent shall not be required to marshal any present or future security for (including but not limited to this Agreement and the Collateral subject to the security interest created hereby), or guaranties of, the Obligations or any of them, or to resort to such security or guaranties in any particular order; and all of its rights hereunder and in respect of such securities and guaranties shall be cumulative and in addition to all other rights, however existing or arising. To the extent that it lawfully may, the Company hereby agrees that it will not invoke any law relating to the marshalling of collateral which might cause delay in or impede the enforcement of the Agent's rights under this Agreement or under any other instrument evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or guaranteed, and to the extent that it lawfully may the Company hereby irrevocably waives the benefits of all such laws.

Section 11. Company's Obligations Not Affected.

To the extent permitted by law, the obligations of the Company under this Security Agreement shall remain in full force and effect without regard to, and shall not be impaired by:

(a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of the Company;

(b) any exercise or nonexercise, or any waiver, by the Agent of any right, remedy, power or privilege under or in respect of any of the Obligations or any security therefor (including this Agreement);

(c) any amendment to or modification of this Agreement or any instrument evidencing any of the Obligations or any security therefor (including this Agreement);

(d) any amendment to or modification of any instrument or agreement (other than this Agreement) securing any of the Obligations; or

(e) the taking of additional security for or any guaranty of any of the Obligations or the release or discharge or termination of any security or guaranty for any of the Obligations; and whether or not the Company shall have notice or knowledge of any of the foregoing.

This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until the payment in full of all of the Obligations.

#### Section 12. No Waiver.

No failure on the part of the Agent to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Agent of any right, remedy or power hereunder preclude any other or future exercise of any other right, remedy or power. Each and every right, remedy and power hereby granted to the Agent, the Secured Parties or the future holders of any of the Obligations or allowed to any of them by law or other agreement, including, without limitation, the Loan Agreement, the Term Notes, or any other Security Document, shall be cumulative to and exclusive of any other, and, subject to the provisions of this Agreement, may be exercised by the Agent, the Secured Parties or the future holders of any of the Obligations from time to time.

#### Section 13. Indemnity and Expenses.

(a) The Company agrees to indemnify the Agent from and against any and all claims, losses and liabilities growing out of or resulting from this Agreement (including, without limitation, enforcement of this Agreement), except claims, losses or liabilities resulting from the Agent's gross negligence or willful misconduct.

(b) The Company agrees to pay, on demand, all reasonable costs and expenses (including reasonable attorneys fees and expenses for legal services of every kind) of the Agent incidental to the sale of, or realization upon, any of the Collateral or in any way relating to the perfection, enforcement or protection of the rights of the Agent hereunder; and the Agent may at any time apply to the payment of all such costs and expenses all monies of the Company or other proceeds arising from its possession or disposition of all or any portion of the Collateral.

Section 14. Consents, Amendments, Waivers, Etc.

Any term of this Agreement may be amended, and the performance or observance by the Company of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a written instrument signed by the Company and the Secured Parties.

Section 15. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, except to the extent that the validity or perfection of the security interest hereunder, or remedies hereunder, in respect of any particular Collateral are governed by the laws of a jurisdiction other than the State of New York. Unless otherwise defined herein or in the Term Loan Agreement, terms used in Article 9 of the Uniform Commercial Code in the State of New York are used herein as therein defined.

Section 16. Parties in Interest.

All terms of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto including, without limitation, any future holder of the Notes, by amendment to the Loan Agreement or otherwise, provided that the Company may not assign or transfer its rights hereunder without the prior written consent of the Agent and none of the Secured Parties may assign or transfer its rights hereunder unless the assignee confirms in writing its agreement to be bound by the provisions of this Agreement.



Section 17. Counterparts.

This Agreement and any amendment hereof may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought.

Section 18. Termination.

Upon payment in full of the Obligations in accordance with their terms, this Agreement shall terminate and the Company shall be entitled to the return, at the Company's expense, of such Collateral in the possession or control of the Agent as has not theretofore been disposed of pursuant to the provisions hereof. If the Agent shall resign as Agent under this Agreement, then a majority of the Secured Parties shall appoint a successor agent whereupon such successor agent shall succeed to the rights, powers and duties of the Agent hereunder and the former Agent's rights, powers and duties as Agent shall terminate. The resigning Agent shall take such actions, at the Company's expense, as the Majority Lenders shall deem reasonably necessary or advisable to transfer all such rights, powers and duties to the new Agent.

Section 19. Notices.

Except as otherwise expressly provided herein, all notices and other communications made or required to be given pursuant to this Agreement shall be in writing and mailed by United States registered or certified first-class mail, postage pre-paid, or sent by telegraph or telex and confirmed by letter, addressed as follows:

(a) if to the Company, at:

North Mill Street  
Fergus Falls, Minnesota 56537

Attention: President  
or at such other addresses for notice as the Company shall last have furnished in writing to the Agent;

(b) if to the Agent, at:

352 Clinton Street  
Brooklyn, New York 11231

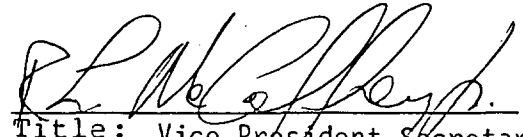
or at such other address for notice as the Agent shall last have furnished in writing to the person giving the notice.

Any such notice or demand shall be deemed to have been duly given or made and to have become effective (a) if delivered by hand to a responsible officer of the party to which it is directed, at time of the receipt thereof by such officer, (b) if sent by first-class mail, postage pre-paid, the earlier of (i) five Business Days after the posting thereof or (ii) receipt, if received on a Business Day, or if received on a day which is not a Business Day, the next Business Day following receipt.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed as an instrument under seal by their authorized representatives as of the date first written above.

OTTER TAIL VALLEY RAILROAD  
COMPANY, INC.

By:

  
Title: Vice President-Secretary

ROBERT E. ABERLIN, As Agent



4213D/6790-1

STATE OF District of Columbia )  
COUNTY OF \_\_\_\_\_ ) SS

On this 27 day of October, 1986, before me personally appeared R. L. McCaffrey, Jr., to me personally known, who, being by me duly sworn, says that he is Vice President of Otter Tail Valley Railroad Company, Inc., and that the said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledges that the execution of the foregoing instrument was the free act and deed of said corporation.

Fancy Z. Buck  
Notary Public

My commission expires:

My Commission Expires September 30, 1989

STATE OF NEW YORK )  
COUNTY OF \_\_\_\_\_ ) SS

On this 24<sup>th</sup> day of October, 1986, before me personally appeared Robert A. Aberlin, to me personally known, who, being by me duly sworn, says that he is Robert E. Aberlin and that he is duly authorized to sign the foregoing instrument in his capacity as Agent for the Secured Parties (as defined therein) and that he acknowledges that the execution of the foregoing instrument in such capacity was the free act and deed.

Margaret Scarabino  
Notary Public

My commission expires:

MARGARET SCARABINO  
Notary Public, State of New York  
No. 24-467369  
Qualified in Kings County  
Commission Expires Sept. 30, 1989

SCHEDULE I  
Rolling Stock

<u>Item</u>	<u>Serial Number</u>
Caboose	BN # 10353
Flatcar	BN # 959451
Ballast Car	GN # 78291
Snow Plow	C&S #99234

4629D/6790

SCHEDULE II

County Where Property Located

Otter Tail

0031/6790

WASHINGTON  
DISTRICT OF COLUMBIA

Before me, Larry Z. Buck, a notary public in and for the District of Columbia, personally came John Docherty, who, being duly sworn, deposes and says that he has compared the copy of the Security Agreement by and between Otter Tail Valley Railroad Company, Inc., Debtor, and Mr. Richard Aberlin, Agent, Secured Party, and has found that the copy is complete and identical in all respects to the original document.

John Docherty  
John Docherty

The foregoing was subscribed and sworn to before me by John Docherty this 27 day of October, 1986.

Larry Z. Buck  
Notary Public

My Commission expires:  
My Commission Expires September 30, 1989

4510D/6790-1